

The below described is **SIGNED**.

Submitted by:
Dated: April 14, 2014

George Hofmann (10005)
Steven C. Strong (6340)

Victor P. Copeland (13511)
Parsons Kinghorn Harris
A Professional Corporation
111 East Broadway, 11th Floor
Salt Lake City, Utah 84111
Telephone: (801) 363-4300
gbh@pkhlawyers.com
scs@pkhlawyers.com

Attorneys for
Infinia Corporation

William J. Thurman

WILLIAM T. THURMAN
U.S. Bankruptcy Judge



tjc

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

In re INFINIA CORPORATION, and
POWERPLAY SOLAR I, LLC,
Debtors.

Jointly Administered under
Case No. 13-30688 (WTT)

Chapter 11

THIS DOCUMENT RELATES TO:

- ☐ In re Infinia Corporation
- ☐ In re PowerPlay Solar I, LLC
- ☒ Both Debtors

**FINDINGS AND CONCLUSIONS REGARDING
DEBTORS' CHAPTER 11 PLAN OF LIQUIDATION**

The Court conducted a hearing on April 14, 2014 at 2:00 p.m. (the "Confirmation Hearing") to consider confirmation of the *Debtors' Chapter 11 Plan of Liquidation Dated February 24, 2014* [Docket No. 271] (the "Plan") filed jointly by Infinia Corporation ("Infinia") and PowerPlay Solar I, LLC ("PowerPlay" and, collectively with Infinia, the

“Debtors”). Steven Strong appeared at the hearing on behalf of Infinia, Troy Aramburu appeared on behalf of PowerPlay, and other appearances were noted on the record.

Based upon the evidence received at the Confirmation Hearing, the *Debtors’ Memorandum in Support of Plan Confirmation* [Docket No. 319], the other papers filed concerning the Plan [including but not limited to Docket Nos. 269, 270, 276, 278, 315, 320 and 322], the statements of counsel, and other matters of record, having inquired into the legal sufficiency of the evidence adduced, and good cause appearing, THE COURT HEREBY FINDS AND CONCLUDES¹ as follows:

- A. Exclusive Jurisdiction; Venue; Core Proceeding. This Court has jurisdiction over the Bankruptcy Cases² pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(2), and this Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.
- B. Judicial Notice. This Court takes judicial notice of the docket of the Bankruptcy Cases maintained by the Bankruptcy Court, including, without limitation, all pleadings, papers and other documents filed, all orders entered, and the transcripts of, and all minute entries on the docket indicating the evidence and arguments made, proffered or adduced at the hearings held before the Court during the pendency of the Bankruptcy Cases.

¹ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. Pro. 7052.

² Capitalized terms used but not otherwise defined herein are defined in the Plan.

- C. Transmittal and Mailing of Materials; Notice. All due, adequate, and sufficient notices of the Plan, the Confirmation Hearing, and the deadlines for voting on and filing objections to the Plan, were given to all known holders of Claims in accordance with the Bankruptcy Rules. The Disclosure Statement, Plan, and relevant ballots were transmitted and served in substantial compliance with the Bankruptcy Rules upon Creditors entitled to vote on the Plan, and such transmittal and service were adequate and sufficient. No other or further notice of the Plan or Confirmation Hearing is or shall be required.
- D. Solicitation. The solicitation of votes for acceptance or rejection of the Plan complied with §§ 1125 and 1126,³ Bankruptcy Rules 3017 and 3018, all other applicable provisions of the Bankruptcy Code, and all other rules, laws, and regulations. Based on the record before the Court in the Bankruptcy Cases, the Debtors have acted in “good faith” within the meaning of § 1125, and are entitled to the protections afforded by § 1125(e).
- E. Distribution. All procedures used to distribute the solicitation materials to the applicable holders of Claims and to tabulate the ballots were fair and conducted in accordance with the Bankruptcy Code, the Bankruptcy Rules, the local rules of the Bankruptcy Court, and all other rules, laws, and regulations.
- F. Creditors’ Acceptance of Plan. The Plan establishes five Classes of Claims and one Class of Equity Interests. Classes 1 and 4 accepted the Plan by affirmative vote. No qualifying ballots were returned with respect to Classes 2, 3, or 5, and

³ Unless otherwise provided, all references to statutory sections in these Findings and Conclusions using the section symbol “§” are to the relevant sections of the Bankruptcy Code.

no creditors in those Classes objected to confirmation of the Plan. Thus, Classes 2, 3, and 5 are deemed to have accepted the Plan.⁴ Accordingly, all five Classes of Claims have accepted the Plan. Class 6 (Equity Interests) is deemed to have rejected the Plan.

G. Plan Complies with Bankruptcy Code. The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying § 1129(a)(1).

- i. Proper Classification. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests in each such Class. The Plan properly classifies Claims and Equity Interests. In addition to Administrative Expense Claims and Priority Tax Claims, which are not classified under the Plan, the Plan designates various separate Classes of Claims and Equity Interests based on differences in their legal nature or priority. Further, valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests under the Plan. Finally, the Classes do not unfairly discriminate between holders of Claims or Equity Interests. Thus, the Plan satisfies §§ 1122 and 1123(a)(1).
- ii. Specify Unimpaired Classes. There are no unimpaired Classes under the Plan. All Classes of Claims and Equity Interests are impaired. Thus § 1123(a)(2) is satisfied.

⁴ See, e.g., In re Ruti-Sweetwater, Inc., 836 F.2d 1263, 1267-68 (10th Cir. 1988); In re Jones, 530, F.3d 1284, 1291 (10th Cir. 2008); In re Armstrong, 292 B.R. 678, 684 (10th Cir. B.A.P. 2003).

- iii. Specify Treatment of Impaired Classes. Classes 1 through 6 are designated as impaired under the Plan. Article IV of the Plan specifies the treatment of the impaired Classes of Claims and Equity Interests, thereby satisfying § 1123(a)(3).
- iv. No Discrimination. The Plan provides for the same treatment for each Claim or Equity Interest in each respective Class unless the holder of a particular Claim has agreed to less favorable treatment with respect to such Claim, thereby satisfying § 1123(a)(4).
- v. Implementation of Plan. The Plan provides adequate and proper means for implementation of the Plan, thereby satisfying § 1123(a)(5). Among other things, the Plan provides for a Liquidating Trustee to administer the resolution of all claims and distribute the Debtors' net assets to creditors whose claims are allowed.
- vi. Corporate Charter Provisions Inapplicable. Section 1123(a)(6) is satisfied because all Equity Interests are automatically cancelled as of the Effective Date pursuant to Section 4.6(a) of the Plan.
- vii. Selection of Post-Confirmation Manager. The identity and affiliations of the Liquidating Trustee is disclosed in the Disclosure Statement and the Plan. Further, provisions in the Plan regarding the selection of the Liquidating Trustee is consistent with the interests of creditors and with public policy. Thus, § 1123(a)(7) is satisfied.
- viii. Payments from Future Income of the Debtor. The Debtors are not individuals, and thus § 1123(a)(8) does not apply.

ix. Additional Plan Provisions. The Plan's provisions are appropriate and consistent with the applicable provisions of the Bankruptcy Code, thus satisfying the requirements of § 1123(b).

x. Bankruptcy Rule 3016(a). The Plan is dated and identifies the Debtors as the proponents, thereby satisfying Bankruptcy Rule 3016(a).

H. The Plan and the Proponents Comply with the Bankruptcy Code. The Plan complies with the applicable provisions of the Bankruptcy Code. Likewise, the Debtors have complied with the applicable provisions of the Bankruptcy Code. Thus, §§ 1129(a)(1) and (a)(2) are satisfied.

i. The Debtors are proper proponents of the Plan under § 1121(c).

ii. The Debtors have complied with the applicable provisions of the Bankruptcy Code, including § 1125, the Bankruptcy Rules, and other orders of the Court in transmitting the Plan, the Disclosure Statement, the ballots, related documents and notices, and in soliciting and tabulating votes on the Plan.

I. Plan Proposed in Good Faith. The Plan is proposed in good faith and not by any means forbidden by law, and therefore complies with the requirements of § 1129(a)(3). In determining that the Plan has been proposed in good faith, the Court has examined the totality of the circumstances surrounding the filing of the Bankruptcy Cases and the formulation of the Plan. Among other things, the Court finds:

i. the Debtors filed the Bankruptcy Cases, and proposed the Plan, for a valid reorganizational purpose;

- ii. neither the Bankruptcy Cases nor the Plan were filed as a litigation tactic or for delay;
- iii. the Debtors have been, and are, actively prosecuting their Bankruptcy Cases;
- iv. the Debtors proposed the Plan with the legitimate and honest purpose of, among other things, maximizing returns to creditors;
- v. the Plan contemplates full payment of Allowed Claims in Classes 1 through 3, and significant distributions to holders of Allowed Claims in Classes 4 and 5;
- vi. the Debtors have sufficient liquidated funds to fully implement the Plan;
- vii. these are not cases involving a single asset or single creditor;
- viii. the Debtors have a reasonable possibility of successfully implementing the Plan and making significant distributions to holders of Allowed Claims; and
- ix. the Plan is feasible and practical, and there is a reasonable likelihood that the Plan will achieve its intended results, which are consistent with the purposes of the Bankruptcy Code.

J. Payments for Services or Costs and Expenses. Any payment made or to be made under the Plan for services or for costs and expenses in or in connection with the Bankruptcy Cases prior to the Effective Date, including all fees and expenses incurred by Professionals, has been approved by or is subject to the approval of the Court as reasonable, thereby satisfying § 1129(a)(4).

- K. Manager of the Reorganized Debtor. The Plan and the Disclosure Statement identify Gil A. Miller of Rocky Mountain Advisory, the Debtors' professional accountants and tax advisors in these Bankruptcy Cases, as the initial Liquidating Trustee. The service of Mr. Miller as the post-Effective Date administrator of the Debtors' consolidated Estates is consistent with the interests of the holders of Claims and with public policy. Therefore, the requirements of § 1129(a)(5) are satisfied.
- L. No Rate Changes. The Plan satisfies § 1129(a)(6) because the Plan does not provide for any change in rates over which a governmental regulatory commission has jurisdiction.
- M. Best Interests of Creditors Test. Because Classes 1 through 3 and Class 5 accepted the Plan by unanimous affirmative vote or by deemed acceptance as noted above, the Plan satisfies § 1129(a)(7)(i) with respect to these Classes of Claims. With respect to Class 4, which accepted the Plan but had a few creditors voting to reject, and Class 6, which is deemed to reject the Plan, the Plan satisfies § 1129(a)(7)(A)(ii) because each holder of a Claim in Class 4 or Equity Interest in Class 6 (as well as holders of Allowed Claims in all other Classes) will receive or retain under the Plan on account of such Claim or Equity Interest property of a value, as of the Effective Date, that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.
- N. Acceptance by All Classes. Classes 1 through 6 (all Classes) are impaired, but as noted above, all Classes of Claims (Classes 1 through 5) have accepted the

Plan. Therefore, § 1129(a)(8) is satisfied with respect to all Classes of Claims.

As to Class 6 (Equity Interests), the Plan is confirmable pursuant to § 1129(b), and discussed below.

- O. Treatment of Administrative Expense Claims and Priority Tax Claims. The Plan satisfies the requirements of § 1129(a)(9). Except to the extent the holder of a particular Claim agrees to a different treatment, the Plan specifies that Administrative Expense Claims (including professional compensation) and Priority Tax Claims will be paid as mandated by § 1129(a)(9).
- P. Acceptance by at Least One Impaired Class. Classes 1 through 5 have accepted the Plan, as noted above. Therefore, there is at least one impaired accepting Class, and § 1129(a)(10) is satisfied.
- Q. Feasibility. The Plan is feasible and complies with § 1129(a)(11) because confirmation is not likely to be followed by a liquidation or the need for further financial reorganization of the Debtors, excepting the liquidation specifically contemplated under the Plan. The Plan offers a reasonable prospect of success and is workable.
- R. Payment of Fees. All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Section 2.2(b) of the Plan, thereby satisfying § 1129(a)(12).
- S. Continuation of Retiree Benefits. The Plan complies with § 1129(a)(13) because the Debtors have no obligation to pay retiree benefits subject to § 1114.
- T. No Domestic Support Obligations. The Debtors are not individuals and thus have no domestic support obligations. Therefore § 1129(a)(14) is not applicable.

- U. Projected Disposable Income. The Debtors are not individuals and thus the disposable income test of § 1129(a)(15) does not apply.
- V. Transfers Will Comply with Nonbankruptcy Law. Although the Plan does not contemplate any transfers of assets other than to the Liquidating Trust, the Plan complies with § 1129(a)(16) because any transfers of assets to be made under the Plan will be made in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.
- W. Fair and Equitable; No Unfair Discrimination. All Classes of Claims have accepted (or are deemed to have accepted) the Plan, and thus compliance with § 1129(b) is not required with respect to Claims. With respect to the Class of Equity Interests (Class 6), the Plan complies with § 1129(b)(1) and (2) because the Plan does not discriminate unfairly with respect to Class 6, and is fair and equitable in compliance with § 1129(b)(2)(C) because there is no fixed liquidation preference or fixed redemption price associated with any of the Equity Interests and, in any event, there are no junior interest holders receiving or retaining any property under the Plan.
- X. No Other Plan. No other chapter 11 plan is pending before the Court in these Bankruptcy Cases, and so § 1129(c) does not apply.
- Y. Principal Purpose of Plan. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933 (15 U.S.C. § 77e). Therefore, the Plan satisfies the requirements of § 1129(d).

Z. Not a Small Business Case. These are not small business cases. Therefore, § 1129(e) is not applicable.

The Court may have announced other findings of fact and conclusions of law on the record at the Confirmation Hearing, which findings and conclusions are incorporated herein by reference.

In summary, the Plan complies with, and the Debtors have satisfied, all applicable confirmation requirements, and the Plan will be confirmed by entry of the separate Confirmation Order.

----- END OF DOCUMENT -----